

WIL-115US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No: 10/611,763
Applicant: William T. Wilkinson et al.
Filed: July 1, 2003
Title: EXERCISE DEVICE FOR EXERCISING UPPER BODY SIMULTANEOUSLY WITH LOWER BODY EXERCISE
TC/A.U.: 3764
Examiner: Unknown
Confirmation No.: 2147
Docket No.: WIL-115US

PETITION TO MAKE SPECIAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The applicant respectfully petitions to make this application special under 37 CFR § 1.102(d) for advancement out of turn for examination.

(1) This petition is accompanied by the fee set forth in 37 CFR § 1.17(h).

(2) Attached is a declaration signed by the Applicant, William T. Wilkinson, stating that (a) there is an infringing device actually on the market, (b) that a rigid comparison of the alleged infringing device with the claims of the application has been made and that it is his opinion that some of the claims are unquestionably infringed, and (c) that he has made or caused to be made a careful and thorough search of the prior art and has a good knowledge of the prior art.

(3) The references deemed most closely related to the subject matter encompassed by the claims are already of record, but additional copies are appended to this petition in the Exhibits indicated below for ease of reference.

(4) A preliminary amendment is being filed with this petition in which the applicant has cancelled claims 50 and 51 as being drawn to an exercise reel not limited to being mounted or adapted to be mounted on a lower body exercise machine, and claims 88 and 89 as being drawn to a method of exercise that is not specific to use of a lower body exercise

machine. These claims are cancelled without prejudice. This leaves the following independent claims remaining, all of which are drawn to lower body exercise machines having upper body exercise devices attached thereto, upper body exercise devices for use with such lower body exercise machines, or methods of exercise performed on such machines: 1, 30, 31, 41, 42, 45, 52, 53, 55, 69, 90, 111, 134, 155. The applicant further agrees, however, to make an election without traverse in accordance with the established telephone restriction practice, should the Office determine that a further restriction requirement should be made. The preliminary amendment also makes amendments to some claims which are relevant to the discussion of references below.

(5) A detailed discussion of the most relevant references follows, pointing out, with the particularity required by 37 CFR 1.111(b) and (c), at least one claimed feature (but not necessarily all the claimed features) that makes each independent claim patentable over the listed references.

Exhibit A: U.S.. Patent Nos. 4,659,077 (Stropkay) and 6,042,516
(Norton), and Advertisement for SKYTREC treadmill system

These references disclose lower body exercise machines, including ski treadmills (Stropkay and Norton) and a walking treadmill (SKYTREC), each of which has an upper body resistance device mounted to the machine.

Claim 1: The claim recites that "each upper body exercise module adapted to provide resistance to a *full natural* forward arm swing of at least one arm of the user." Because the arm motion of one arm is necessarily bound to the motion of the other arm when using the devices disclosed in the cited references, the user's arm motion is not natural and may not be full, as the backward arm swing of one arm is limited by the forward arm swing of the opposite arm, and vice versa.

Claim 30: The claim recites "each upper body exercise module adapted to provide resistance to a *full natural* forward or backward arm swing of at least one arm of the user." The same discussion as for claim 1 applies.

Claim 31: Same as claim 1

Claim 41: Same as claim 1.

Claim 42: Same as claim 1.

Claim 45: The claim recites "a retraction mechanism for automatically rewinding the spool." The references all rely on user force to supply the retraction for rewinding the spool, which is not *automatic*.

Claim 52: The claim recites a method comprising "walking on a treadmill having a plurality of rear-mounted upper-body resistance devices." The references only show forward mounted upper-body resistance devices.

Claim 53: Same as claim 1

Claim 55: The claim recites "a plurality of locations for attaching the one or more upper body exercise modules." The references only show a single mounting location.

Claim 69: The claim recites "each upper body exercise module adapted to provide resistance to a full, natural arm swing of at least one arm of the user. The arguments advanced with respect to claim 30 apply.

Claim 90: The references disclose only a single upper body exercise component, whereas the claim recites "at least two upper body resistance devices."

Claim 111: The references disclose a retraction mechanism powered exclusively by user-applied force, whereas the claim recites that "neither the resistance mechanism nor the retraction mechanism are powered exclusively by . . . user-applied force".

Claim 134: The references disclose an upper exercise component positioned forward of the user, whereas claim 134 recites a mounting position that is "not forward of the user."

Claim 155: The claim recites an upper body exercise component that is adapted "to fully retract when not in use," whereas the references do not disclose this feature.

Exhibit B: U.S. Patent No. 5,632,708 (Wilkinson et al.)

This reference discloses lower body exercise equipment, including cycling (Fig. 2), stair/step climbing (Fig. 7) and treadmill (Fig. 8) apparatus, that includes two elastic bands

positioned in front of the user. In one embodiment, the elastic bands may be mounted behind the user and passed under the handlebars of a stationary exercise bike (Fig. 4). The '708 patent also discloses an embodiment in which inelastic bands may be used in conjunction with a single friction brake mechanism mounted forward of the user (Fig. 6, col. 5, lines 7-11), similar to the devices disclosed in the Stropkay, Norton, and SKYTREC references. This embodiment can therefore be distinguished from each of the independent claims for the same reasons as give for the Stropkay, Norton, and SKYTREC references above, so this embodiment is not addressed again below. Only the elastic-band based resistance embodiments are discussed below.

Claim 1: The claim recites that "each exercise module attached to the lower body exercise machine via a mounting device comprising a mounting arm adapted to position the upper body exercise module *behind and to one side of the user*," whereas the reference does not show such a mounting arm.

Claim 30: As amended, claim 30 recites that the resistance mechanism is "not powered exclusively by elasticity of the elongated connector," whereas the applicable resistance devices disclosed by the reference feature exclusively elastic resistance.

Claim 31: This claim recites "a spool . . . on which the elongated connector is adapted to be wound" and a resistance mechanism "adapted to provide frictional resistance . . .". The elastic band embodiments disclosed in the reference do not disclose this feature.

Claim 41: This claim recites "a support structure for preventing the user from being pulled off of the lower body exercise machine by the resistance of the upper body exercise module." The elastic band embodiments of the reference do not disclose such a structure. Although Fig. 7 shows a belt "for stability," the resistance is forward of the user and would therefore tend to cause the user to be pulled forward, whereas the belt only prevents the user from falling backward.

Claim 42: Same as claim 30.

Claim 45: Same as claim31.

Claim 52: The claim recites a method comprising "walking on a treadmill having a plurality of rear-mounted upper-body resistance devices." The reference only shows forward mounted upper-body resistance devices on a treadmill and does not suggest how the rear-mounted devices provided on a stationary bike could be used on a treadmill.

Claim 53: The claim recites "a docking engagement located forward of a user position . . . adapted to permit the user to optionally disengage and re-engage the user engagement while using the lower body exercise machine," whereas the reference does not disclose this feature.

Claim 55: Same as claim 30.

Claim 69: Same as claim 30.

Claim 90: The claim recites that the resistance mechanism is "not powered exclusively by elasticity of the elongated connector," whereas the applicable resistance devices disclosed by the reference feature exclusively elastic resistance.

Claim 111: The references disclose that "neither the resistance mechanism nor the retraction mechanism are powered exclusively by elasticity of the elongated connector." Accordingly, the same arguments as in claim 90 apply.

Claim 134: Same as claim 90.

Claim 155: The claim recites an upper body exercise component that is adapted "to fully retract when not in use such that a stop at or near the connector first end abuts the housing" whereas the elastic bands do not have this feature.

Exhibit C: U.S. Patent No. 6,123,649 (Lee et al.)

This reference discloses a walking treadmill with at least two upper body resistance devices mounted to a frame positioned behind the user adapted to provide resistance to *forward* arm movements of the user in the user position. "

Claim 1: The claim recites that "each exercise module attached to the lower body exercise machine via a mounting device comprising a mounting arm adapted to position

the upper body exercise module behind and to one side of the user . . . the mounting arm positioned to avoid interference with an egress path directly behind the user in the normal use position,” whereas the reference shows a mounting frame that interferes with such an egress path.

Claim 30: This claim recites a lower body exercise machine selected from a group that excludes treadmills, whereas the reference only pertains to a treadmill.

Claim 31: This claim recites “a resistance mechanism “adapted to provide frictional resistance,” whereas the reference does not disclose embodiments with a frictional resistance component.

Claim 41: This claim recites “a support structure for preventing the user from being pulled off of the lower body exercise machine by the resistance of the upper body exercise module.” No such structure is shown by the reference.

Claim 42: This claim recites that the hand grip is “for being gripped by the user with an open or loose grip,” whereas the reference discloses cuffs that are not gripped by the user.

Claim 45: Same as claim 31.

Claim 52: The claim recites that the “exerciser is able to step onto and off of the treadmill from the rear of the treadmill unimpeded by the resistance devices or any mounting structure associated therewith,” whereas the reference shows a mounting structure that impedes entry or exit from the rear of the treadmill.

Claim 53: The claim recites “a docking engagement located forward of a user position . . . adapted to permit the user to optionally disengage and re-engage the user engagement while using the lower body exercise machine,” whereas the reference does not disclose this feature.

Claim 55: The claim recites that each upper body exercise module is “adapted to attach to and detach from the lower body exercise machine or extensions” and that the machine comprises “a plurality of locations for attaching the one or more upper body exercise

modules or extensions.” The cited reference does not disclose detachable modules or multiple locations for attachment of modules.

Claim 69: This claim recites that the hand grip is “for being gripped by the user,” whereas the reference discloses cuffs that are not gripped by the user.

Claim 90: The claim recites that each resistance device is “adapted to provide resistance to backward arm movements of the user,” whereas the reference only discloses resistance provided to forward arm movements of the user.

Claim 111: Same as claim 90.

Claim 134: Same as claim 90.

Claim 155: Same as claim 90.

Exhibit D: U.S. Patent No. 5,951,449 (Oppiecht)

This reference discloses a stand-alone frame that can be used with a treadmill or other lower body exercise device to provide upper body resistance. See col. 4, lines 12-17 (stating that the invention “is dimensioned and configured to stand alone”).

Claim 1: The claim recites that “each exercise module attached to the lower body exercise machine,” whereas the reference shows the modules attached to a freestanding unit.

Claim 30: Same as claim 1.

Claim 31: Same as claim 1.

Claim 41: Same as claim 1.

Claim 42: Same as claim 1.

Claim 45: The claim recites that the module is “for attaching to a lower body exercise machine,” whereas the unit disclosed by the reference is freestanding.

Claim 52: The claim recites a method comprising "walking on a treadmill having a plurality of rear-mounted upper-body resistance devices." The reference only shows forward located upper-body resistance devices that are not mounted to the treadmill.

Claim 53: Same as claim 1.

Claim 55: The claim recites one or more upper body exercise modules "for attachment to the lower body exercise machine." Accordingly, the arguments for claim 1 apply.

Claim 69: As amended, same as claim 1.

Claim 90: The claim recites that the one or more upper body resistance devices are "*directly mounted*" on the lower body exercise machine or treadmill, whereas the reference only discloses resistance devices mounted to a structure that stands alone.

Claim 111: Same as claim 90.

Claim 134: Same as claim 90.

Claim 155: Same as claim 90.

Exhibit E: U.S. Patent No. 4,779,866 (Marshall et al.)

This reference discloses a portable exercise device having a non-elastic elongated connector 21 that is fully retractable when not in use (Fig. 5), and having a resistance mechanism 46 and a retraction mechanism 31, neither of which are powered by user-applied force.

The Marshall reference does not teach or suggest, however, "a lower body exercise machine" having upper body exercise devices mounted thereto, as recited in each of claims 1, 30, 31, 41, 42, 45, 53, 55, 69, 86, 107, 130, and 151, a device "for attaching to a lower body exercise machine" as recited in claim 45, or methods of exercising on a treadmill that having upper body resistance devices rear-mounted thereto, as recited in claim 52.

Exhibit F: The DP Fit for Life Roadmaster and Concourse 8 55 UB Treadmills

The catalog pages for these treadmills show a treadmill with handgrips attached to portions of a cord emanating from openings at the rear of the treadmill. The sketch drawn by designer of the treadmills, submitted with the catalog pages by the inventor along with a declaration on March 3, 2003, shows that the cord portions attached to the handgrips are part of a single elastic shock cord that wraps around a number of free-rotating pulleys under the treadmill. The handgrips are weighted.

Claim 1: The claim recites that "each exercise module attached to the lower body exercise machine via a mounting device comprising a mounting arm adapted to position the upper body exercise module behind and to one side of the user," whereas the reference does not show a mounting arm.

Claim 30: This claim recites a lower body exercise machine selected from a group that excludes treadmills, whereas the reference only pertains to a treadmill.

Claim 31: This claim recites "a spool connected to the elongated connector second end and on which the elongated connector is adapted to be wound," whereas the reference does not disclose a spool and both ends of the cord are attached to handgrips.

Claim 41: This claim recites "a support structure for preventing the user from being pulled off of the lower body exercise machine by the resistance of the upper body exercise module." No such structure is shown by the reference.

Claim 42: This claim recites that the handgrip is "for being gripped by the user with an open or loose grip," whereas the reference discloses handgrips that must be grasped with a closed grip .

Claim 45: Same as claim 31.

Claim 52: The claim recites the step of the exerciser "loosely gripping" the user engagement, whereas the reference requires a closed grip.

Claim 53: The claim recites that each upper body resistance module is adapted to provided resistance "to a full natural forward arm swing of at least one arm of the user." Because only a single cord is provided, the motion of each arm is tied to the motion of the other arm, preventing a full natural arm swing of either arm.

Claim 55: The claim recites that each upper body exercise module is “adapted to attach to and detach from the lower body exercise machine or extensions” and that the machine comprises “a plurality of locations for attaching the one or more upper body exercise modules or extensions.” The cited reference does not disclose detachable modules or multiple locations for attachment of modules.

Claim 69: The claim recites that each upper body resistance module is adapted to provide resistance “to a full natural arm swing of at least one arm of the user.” Because only a single cord is provided, the motion of each arm is tied to the motion of the other arm, preventing a full natural arm swing of either arm.

Claim 90: The claim recites that each resistance device is “adapted to provide resistance to backward arm movements of the user,” whereas the reference only discloses resistance provided to forward arm movements of the user.

Claim 111: Same as claim 90.

Claim 134: Same as claim 90.

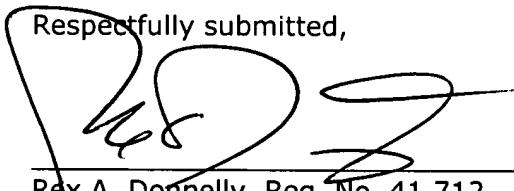
Claim 155: Same as claim 90.

Combination of references

There is no teaching or suggestion that any of the references cited above could be combined with the teachings of any of the other references to arrive at the applicant’s invention as claimed. Accordingly, it would be improper hindsight to pick and choose selected features of each of the above references to create the unique combinations of elements recited by the applicant.

(6) For all of the above reasons, the applicant respectfully requests that this petition be granted, and requests that the examiner contact the undersigned in the event that additional information is desired.

Respectfully submitted,



Rex A. Donnelly, Reg. No. 41,712
Costas S. Krikilis, Reg. No. 28,028
Attorneys for Applicant

RAD/rc

Enclosures: Declaration of William T. Wilkinson
Exhibits A-F

Dated: April 30, 2004

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Wilmington, DE 19899
(302) 778-2500

The Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. **18-0350** of any fees associated with this communication.

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Ruth Curran



FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 130)

Complete if Known

Application Number	10/611,763
Filing Date	July 1, 2003
First Named Inventor	William T. Wilkinson
Examiner Name	Unknown
Art Unit	3764
Attorney Docket No.	WIL-115US

METHOD OF PAYMENT (check all that apply)

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1)

(\$ 0)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		Extra Claims		Fee from below	Fee Paid
		-20**	= 0	X 0	= 0
Independent Claims		-3**	= 0	X 0	= 0
Multiple Dependent				X 0	= 0

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2)

(\$ 0)

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3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

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SUBTOTAL (3)

(\$ 130)

SUBMITTED BY

Complete if applicable

Name (Print/Type)	Rex A. Donnelly	Registration No. Attorney/Agent	41,712	Telephone	(302) 778-2500
Signature				Date	April 30, 2004

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FEE CALCULATION (continued)

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SUBTOTAL (3)

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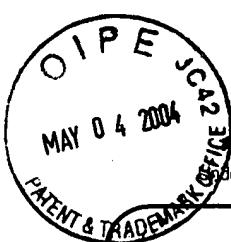
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Name (Print/Type)	Rex A. Donnelly	Registration No. Attorney/Agent	11,712	Telephone	(302) 778-2500
Signature				Date	April 30, 2004

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TRANSMITTAL FORM

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Total Number of Pages in This Submission

Application Number 10/611,763

Filing Date July 1, 2003

First Named Inventor William T. Wilkinson

Art Unit 3764

Examiner Name Unknown

Attorney Docket No. WIL-115US

ENCLOSURES (Check all that apply)

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 - Response to Missing Parts under
37 CFR 1.52 or 1.53

- Drawing(s)
- Licensing-related Papers
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- Appeal Communication to Board
of Appeals and Interferences
- Appeal Communication to Group
(Appeal Notice, Brief, Reply
Brief)
- Proprietary Information
- Status Letter
- Other Enclosure(s) (please
identify below): Return Receipt
Card

Remarks:

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or
Individual

Rex A. Donnelly

Registration No. (Attorney/Agent)

41,712

Signature

Date

April 30, 2004

CERTIFICATE OF TRANSMISSION / MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date:

April 30, 2004

Name (Print/Type)

Ruth Curran

Signature

Date

April 30, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, ALEXANDRIA, VA 22313-1450.

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